

UNITED STATES DISTRICT COURT FOR  
THE NORTHERN DISTRICT OF TEXAS  
FORT WORTH DIVISION

CLERK OF COURT

§ § § § §

**MIDLAND CREDIT MANAGEMENT, INC. AND MIDLAND FUNDING LLC'S  
ANSWER AND AFFIRMATIVE DEFENSES TO PLAINTIFF'S COMPLAINT – PAGE 1**

3. The Midland Defendants deny the allegations contained in paragraph 3 of the Complaint.

### **VENUE**

4. The Midland Defendants admit the allegation contained in paragraph 4 of the Complaint to the extent that venue is proper in this judicial district. The Midland Defendants deny the allegations contained in paragraph 4 of the Complaint to the extent that it asserts that any violations of either state or federal law took place.

5. The Midland Defendants lack information to admit or deny the allegation contained in paragraph 5 of the Complaint.

### **PARTIES**

6. The Midland Defendants lack information to admit or deny the allegations contained in paragraph 6 of the Complaint; although, the Midland Defendants admit that Plaintiff is an individual.

7. The Midland Defendants admit the allegations contained in paragraph 7 of the Complaint.

8. The Midland Defendants admit the allegations contained in paragraph 8 of the Complaint.

9. The Midland Defendants lack information to admit or deny the allegations contained in paragraph 9 of the Complaint.

10. The Midland Defendants lack information to admit or deny the allegations contained in paragraph 10 of the Complaint.

11. The Midland Defendants lack information to admit or deny the allegations contained in paragraph 11 of the Complaint.

12. The Midland Defendants lack information to admit or deny the allegations contained in paragraph 12 of the Complaint.

13. The Midland Defendants lack information to admit or deny the allegation contained in paragraph 13 of the Complaint. The Midland Defendants further state it lacks information to admit or deny whether Midland Credit Management is considered a debt collector with regards to the account of Plaintiff.

14. The Midland Defendants admit the allegations contained in paragraph 14 of the Complaint to the extent that at times Midland Credit acts as a debt collector in the state of Texas.

15. The Midland Defendants admit the allegations contained in paragraph 15 of the Complaint to the extent that one of Midland Credit's business operations is the collection of debts. To the extent a further answer is required the Midland Defendants deny the remaining allegations contained in paragraph 15 of the Complaint.

16. The Midland Defendants admit the allegation contained in paragraph 16 of the Complaint that one of Midland Credit's business operations is the collection of debts. The Midland Defendants further state that Midland Credit lacks information to admit or deny that it acted as a debt collector as that term is defined under the FDCPA with regard to the Plaintiff and therefore the allegations are denied.

17. The Midland Defendants deny the allegations contained in paragraph 17 of the Complaint.

18. The Midland Defendants deny the allegations contained in paragraph 18 of the Complaint.

19. The Midland Defendants deny the allegations contained in paragraph 19 of the Complaint.

20. The Midland Defendants lack information to admit or deny the allegations contained in paragraph 20 of the Complaint, and therefore, the allegations are denied.

21. The Midland Defendants lack information to admit or deny the allegations contained in paragraph 21 of the Complaint, and therefore, the allegations are denied.

22. The Midland Defendants lack information to admit or deny the allegations contained in paragraph 22 of the Complaint, and therefore, the allegations are denied.

23. The Midland Defendants lack information to admit or deny the allegations contained in paragraph 23 of the Complaint, and therefore, the allegations are denied.

#### **FACTUAL ALLEGATIONS**

24. The Midland Defendants admit the allegations contained in paragraph 24 of the Complaint with regards to the account numbers listed by the Plaintiff. The Midland Defendants lack information to admit or deny the allegations contained in paragraph 24 of the Complaint and therefore, the allegations are denied.

25. The Midland Defendants lack information to admit or deny the allegations contained in paragraph 25 of the Complaint, and therefore, the allegations are denied.

26. The Midland Defendants admit the allegations contained in paragraph 26 of the Complaint.

27. The Midland Defendants lack information to admit or deny the allegations contained in paragraph 27 of the Complaint, and therefore, the allegations are denied.

28. The Midland Defendants lack information to admit or deny the allegations contained in paragraph 28 of the Complaint, and therefore, the allegations are denied.

29. The Midland Defendants lack information to admit or deny the allegations contained in paragraph 29 of the Complaint, and therefore, the allegations are denied.

30. The Midland Defendants lack information to admit or deny the allegations contained in paragraph 30 of the Complaint, and therefore, the allegations are denied.

31. The Midland Defendants lack information to admit or deny the allegations contained in paragraph 31 of the Complaint, and therefore, the allegations are denied.

32. The Midland Defendants lack information to admit or deny the allegations contained in paragraph 32 of the Complaint, and therefore, the allegations are denied.

33. The Midland Defendants admit the allegations contained in paragraph 33 of the Complaint.

34. The Midland Defendants admit the allegations contained in paragraph 34 of the Complaint.

448761.1

35. The Midland Defendants lack information to admit or deny the allegations contained in the first sentence of paragraph 35 of the Complaint, and therefore, the allegations are denied. The Midland Defendants admit the allegations contained in the second sentence of Paragraph 35 of the Complaint. The Midland Defendants deny the remaining allegations contained in paragraph 35 of the Complaint. The Midland Defendants further state that at no time did Plaintiff provide any documents to the Midland Defendants that supported her contention that the account was settled in full.

36. The Midland Defendants lack information to admit or deny the allegations contained in paragraph 36 of the Complaint, and therefore, the allegations are denied.

37. The Midland Defendants admit the allegations contained in paragraph 37 of the Complaint to the extent Midland Credit Management received a dispute letter from the Plaintiff. The Midland Defendants lack information to admit or deny the remaining allegations contained in paragraph 37 of the Complaint, and therefore, the allegations are denied.

38. The Midland Defendants admit the allegations contained in paragraph 38 of the Complaint.

39. The Midland Defendants admit that Midland Credit did receive some ACDV's from the credit reporting bureaus.

40. The Midland Defendants lack information to admit or deny the allegations contained in paragraph 40 of the Complaint, and therefore, the allegations are denied.

41. The Midland Defendants lack information to admit or deny the allegations contained in paragraph 41 of the Complaint, and therefore, the allegations are denied.

42. The Midland Defendants deny the allegations contained in paragraph 42 of the Complaint.

43. The Midland Defendants deny the allegations contained in paragraph 43 of the Complaint.

44. The Midland Defendants deny the allegations contained in paragraph 44 of the Complaint.

45. The Midland Defendants deny the allegations contained in paragraph 45 of the Complaint.

46. The Midland Defendants deny the allegations contained in paragraph 46 of the Complaint.

47. The Midland Defendants lack information to admit or deny the allegations contained in paragraph 47 of the Complaint, and therefore, the allegations are denied.

48. The Midland Defendants lack information to admit or deny the allegations contained in paragraph 48 of the Complaint, and therefore, the allegations are denied.

49. The Midland Defendants lack information to admit or deny the allegations contained in paragraph 49 of the Complaint, and therefore, the allegations are denied.

50. The Midland Defendants lack information to admit or deny the allegations contained in paragraph 50 of the Complaint, and therefore, the allegations are denied.

51. The Midland Defendants deny the allegations contained in paragraph 51 of the Complaint.

52. The Midland Defendants deny the allegations contained in paragraph 52 of the Complaint.

53. The Midland Defendants deny the allegations contained in paragraph 53 of the Complaint.

54. The Midland Defendants deny the allegations contained in paragraph 54 of the Complaint.

55. The Midland Defendants deny the allegations contained in paragraph 55 of the Complaint.

56. The Midland Defendants lack information to admit or deny the allegations contained in paragraph 56 of the Complaint, and therefore, the allegations are denied.

57. The Midland Defendants lacks information to admit or deny the allegations contained in paragraph 57 of the Complaint and therefore the allegations are denied. The Midland Defendants further states that the letter in question speaks for itself.

58. The Midland Defendants admit the allegations contained in paragraph 58 of the Complaint.

59. No response is required of the Midland Defendants to paragraph 59 of the Complaint because no allegations are set forth.

60. The Midland Defendants lack information to admit or deny the allegations contained in paragraph 60 of the Complaint, and therefore, the allegations are denied.



61. The Midland Defendants deny the allegations contained in paragraph 61 of the Complaint.

62. The Midland Defendants admit the allegations contained in paragraph 62 of the Complaint.

63. The Midland Defendants deny the allegations contained in paragraph 63 of the Complaint.

64. The Midland Defendants lack information to admit or deny the allegations contained in paragraph 64 of the Complaint therefore the allegations are denied.

65. The Midland Defendants deny the allegations contained in paragraph 65 of the Complaint.

66. The Midland Defendants deny the allegations contained in paragraph 66 of the Complaint.

67. The Midland Defendants deny the allegations contained in paragraph 67 of the Complaint.

68. The Midland Defendants deny the allegations contained in paragraph 68 of the Complaint.

69. The Midland Defendants deny the allegations contained in paragraph 69 of the Complaint.

70. The Midland Defendants deny the allegations contained in paragraph 70 of the Complaint.

448761.1

**COUNT I – VIOLATION OF FCRA BY MIDLAND FUNDING**

71. The Midland Defendants incorporate their responses to paragraphs 1-70 of the Complaint.

72. The Midland Defendants deny the allegations contained in paragraph 72 of the Complaint.

73. The Midland Defendants deny the allegations contained in paragraph 73 of the Complaint.

74. The Midland Defendants deny the allegations contained in paragraph 74 of the Complaint.

**COUNT II – VIOLATION OF FDCPA BY MIDLAND FUNDING**

75. The Midland Defendants incorporate their responses to paragraphs 1-74 of the Complaint.

76. The Midland Defendants deny the allegations contained in paragraph 76 of the Complaint.

77. The Midland Defendants deny the allegations contained in paragraph 77 of the Complaint.

78. The Midland Defendants deny the allegations contained in paragraph 78 of the Complaint.

**COUNT III – VIOLATION OF FCRA BY MIDLAND CREDIT**

79. The Midland Defendants incorporate their responses to paragraphs 1-78 of the Complaint.

80. The Midland Defendants deny the allegations contained in paragraph 80 of the Complaint.

81. The Midland Defendants deny the allegations contained in paragraph 81 of the Complaint.

82. The Midland Defendants deny the allegations contained in paragraph 82 of the Complaint.

#### **COUNT IV – VIOLATION OF FDCPA BY MIDLAND CREDIT**

83. The Midland Defendants incorporate their responses to paragraphs 1-82 of the Complaint.

84. The Midland Defendants deny the allegations contained in paragraph 84 of the Complaint.

85. The Midland Defendants deny the allegations contained in paragraph 85 of the Complaint.

#### **COUNT V – VIOLATION OF TEX. FIN. CODE BY MIDLAND FUNDING**

86. The Midland Defendants incorporate their responses to paragraphs 1-85 of the Complaint.

87. The Midland Defendants deny the allegations contained in paragraph 87 of the Complaint.

88. The Midland Defendants deny the allegations contained in paragraph 88 of the Complaint.

**COUNT VI – VIOLATION OF TEX. FIN. CODY BY MIDLAND CREDIT**

89. The Midland Defendants incorporate their responses to paragraphs 1-88 of the Complaint.

90. The Midland Defendants deny the allegations contained in paragraph 90 of the Complaint.

91. The Midland Defendants deny the allegations contained in paragraph 91 of the Complaint.

**COUNT VII – INVASION OF PRIVACY (INTRUSION ON  
SECLUSION BY MIDLAND CREDIT**

92. The Midland Defendants deny the allegations contained in paragraph 92 of the Complaint.

**COUNT VIII – VIOLATION OF FCRA BY CITIFINANCIAL**

93. The Midland Defendants incorporate their responses to paragraphs 1-92 of the Complaint.

94. The Midland Defendants lack information to admit or deny the allegations contained in paragraph 94 of the Complaint, and therefore, the allegations are denied.

95. The Midland Defendants lack information to admit or deny the allegations contained in paragraph 95 of the Complaint, and therefore, the allegations are denied.

96. The Midland Defendants lack information to admit or deny the allegations contained in paragraph 96 of the Complaint, and therefore, the allegations are denied.

#### **COUNT IX – VIOLATION OF FCRA BY EQUIFAX**

97. The Midland Defendants incorporate their responses to paragraphs 1-96 of the Complaint.

98. The Midland Defendants lack information to admit or deny the allegations contained in paragraph 98 of the Complaint, and therefore, the allegations are denied.

99. The Midland Defendants lack information to admit or deny the allegations contained in paragraph 99 of the Complaint, and therefore, the allegations are denied.

100. The Midland Defendants lack information to admit or deny the allegations contained in paragraph 100 of the Complaint, and therefore, the allegations are denied.

#### **COUNT X – VIOLATION OF FCRA BY EXPERIAN**

101. The Midland Defendants incorporate their responses to paragraphs 1-100 of the Complaint.

102. The Midland Defendants lack information to admit or deny the allegations contained in paragraph 102 of the Complaint, and therefore, the allegations are denied.

103. The Midland Defendants lack information to admit or deny the allegations contained in paragraph 103 of the Complaint, and therefore, the allegations are denied.

104. The Midland Defendants lack information to admit or deny the allegations contained in paragraph 104 of the Complaint, and therefore, the allegations are denied.

#### **COUNT XI – VIOLATION OF FCRA BY TRANS UNION**

105. The Midland Defendants incorporate their responses to paragraphs 1-104 of the Complaint.

106. The Midland Defendants lack information to admit or deny the allegations contained in paragraph 106 of the Complaint, and therefore, the allegations are denied.

107. The Midland Defendants lack information to admit or deny the allegations contained in paragraph 107 of the Complaint, and therefore, the allegations are denied.

108. The Midland Defendants lack information to admit or deny the allegations contained in paragraph 108 of the Complaint, and therefore, the allegations are denied.

#### **RESPONDEAT SUPERIOR**

109. The Midland Defendants lack information to admit or deny the allegations contained in paragraph 109 of the Complaint, and therefore, the allegations are denied.

110. The Midland Defendants lack information to admit or deny the allegations contained in paragraph 110 of the Complaint, and therefore the allegations are denied.

111. The Midland Defendants lack information to admit or deny the allegations contained in paragraph 111 of the Complaint, and therefore, the allegations are denied.

112. The Midland Defendants lack information to admit or deny the allegations contained in paragraph 112 of the Complaint, and therefore, the allegations are denied.

113. The Midland Defendants lack information to admit or deny the allegations contained in paragraph 113 of the Complaint, and therefore, the allegations are denied.

114. The Midland Defendants lack information to admit or deny the allegations contained in paragraph 114 of the Complaint, and therefore, the allegations are denied.

115. The Midland Defendants deny the allegations contained in paragraph 115 of the Complaint.

116. The Midland Defendants deny the allegations contained in paragraph 116 of the Complaint.

#### **JURY TRIAL DEMAND**

117. No response is required of the Midland Defendants to paragraph 117 of the Complaint because no allegations are set forth.

#### **DEMAND FOR RELIEF**

118. No response is required of the Midland Defendants to paragraph 118 of the Complaint because no allegations are set forth. To the extent a response is required, the Midland Defendants deny the allegations contained in paragraph 118 of the Complaint.

119. No response is required of the Midland Defendants to paragraph 119 of the Complaint because no allegations are set forth. To the extent a response is required, the Midland Defendants deny the allegations contained in paragraph 119 of the Complaint.

120. No response is required of the Midland Defendants to paragraph 120 of the Complaint because no allegations are set forth. To the extent a response is required, the Midland Defendants deny the allegations contained in paragraph 120 of the Complaint.

121. No response is required of the Midland Defendants to paragraph 121 of the Complaint because no allegations are set forth. To the extent a response is required, the Midland Defendants deny the allegations contained in paragraph 121 of the Complaint.

122. No response is required of the Midland Defendants to paragraph 122 of the Complaint because no allegations are set forth. To the extent a response is required, the Midland Defendants deny the allegations contained in paragraph 122 of the Complaint.

123. No response is required of the Midland Defendants to paragraph 123 of the Complaint because no allegations are set forth. To the extent a response is required, the Midland Defendants deny the allegations contained in paragraph 123 of the Complaint.

124. No response is required of the Midland Defendants to paragraph 124 of the Complaint because no allegations are set forth. To the extent a response is required, the Midland Defendants deny the allegations contained in paragraph 124 of the Complaint.

125. No response is required of Midland Defendants to paragraph 125 of the Complaint because no allegations are set forth. To the extent a response is required, the Midland Defendants deny the allegations contained in paragraph 125 of the Complaint.



126. No response is required of the Midland Defendants to paragraph 126 of the Complaint because no allegations are set forth. To the extent a response is required, the Midland Defendants deny the allegations contained in paragraph 126 of the Complaint.

127. No response is required of the Midland Defendants to paragraph 127 of the Complaint because no allegations are set forth. To the extent a response is required, the Midland Defendants deny the allegations contained in paragraph 127 of the Complaint.

128. No response is required of Midland Defendants to paragraph 128 of the Complaint because no allegations are set forth. To the extent a response is required, the Midland Defendants deny the allegations contained in paragraph 128 of the Complaint.

129. No response is required of the Midland Defendants to paragraph 129 of the Complaint because no allegations are set forth. To the extent a response is required, the Midland Defendants deny the allegations contained in paragraph 129 of the Complaint.

130. No response is required of the Midland Defendants to paragraph 130 of the Complaint because no allegations are set forth. To the extent a response is required, the Midland Defendants deny the allegations contained in paragraph 130 of the Complaint.

131. No response is required of Midland Defendants to paragraph 118 of the Complaint because no allegations are set forth. To the extent a response is required, Midland Defendants deny the allegations contained in paragraph 131 of the Complaint.

132. No response is required of the Midland Defendants to paragraph 132 of the Complaint because no allegations are set forth. To the extent a response is required, the Midland Defendants deny the allegations contained in paragraph 132 of the Complaint.

133. No response is required of the Midland Defendants to paragraph 133 of the Complaint because no allegations are set forth. To the extent a response is required, the Midland Defendants lack information to admit or deny the allegations contained in paragraph 133 of the Complaint, and therefore, the allegations are denied.

134. No response is required of the Midland Defendants to paragraph 134 of the Complaint because no allegations are set forth. To the extent a response is required, the Midland Defendants lack information to admit or deny the allegations contained in paragraph 134 of the Complaint, and therefore, the allegations are denied.

135. No response is required of the Midland Defendants to paragraph 135 of the Complaint because no allegations are set forth. To the extent a response is required, the Midland Defendants lack information to admit or deny the allegations contained in paragraph 135 of the Complaint, and therefore, the allegations are denied.

136. No response is required of the Midland Defendants to paragraph 136 of the Complaint because no allegations are set forth. To the extent a response is required, the Midland Defendants lack information to admit or deny the allegations contained in paragraph 136 of the Complaint, and therefore, the allegations are denied.

137. No response is required of the Midland Defendants to paragraph 137 of the Complaint because no allegations are set forth. To the extent a response is required, the Midland Defendants lack information to admit or deny the allegations contained in paragraph 137 of the Complaint, and therefore, the allegations are denied.

138. No response is required of the Midland Defendants to paragraph 118 of the Complaint because no allegations are set forth. To the extent a response is required, the Midland Defendants lack information to admit or deny the allegations contained in paragraph 138 of the Complaint, and therefore, the allegations are denied.

139. No response is required of the Midland Defendants to paragraph 139 of the Complaint because no allegations are set forth. To the extent a response is required, the Midland Defendants lack information to admit or deny the allegations contained in paragraph 139 of the Complaint, and therefore, the allegations are denied.

140. No response is required of the Midland Defendants to paragraph 140 of the Complaint because no allegations are set forth. To the extent a response is required, the Midland Defendants lack information to admit or deny the allegations contained in paragraph 140 of the Complaint, and therefore, the allegations are denied.

141. No response is required of the Midland Defendants to paragraph 141 of the Complaint because no allegations are set forth. To the extent a response is required, the Midland Defendants lack information to admit or deny the allegations contained in paragraph 141 of the Complaint, and therefore, the allegations are denied.

142. No response is required of the Midland Defendants to paragraph 142 of the Complaint because no allegations are set forth. To the extent a response is required, the Midland Defendants lack information to admit or deny the allegations contained in paragraph 142 of the Complaint, and therefore, the allegations are denied.

143. No response is required of the Midland Defendants to paragraph 143 of the Complaint because no allegations are set forth. To the extent a response is required, the Midland Defendants lack information to admit or deny the allegations contained in paragraph 143 of the Complaint, and therefore, the allegations are denied.

144. No response is required of the Midland Defendants to paragraph 144 of the Complaint because no allegations are set forth. To the extent a response is required, the Midland Defendants lack information to admit or deny the allegations contained in paragraph 144 of the Complaint, and therefore, the allegations are denied.

145. No response is required of the Midland Defendants to paragraph 145 of the Complaint because no allegations are set forth. To the extent a response is required, the Midland Defendants deny the allegations contained in paragraph 145 of the Complaint.

#### **AFFIRMATIVE DEFENSES**

By way of further answer, the Midland Defendants plead the following affirmative defenses:

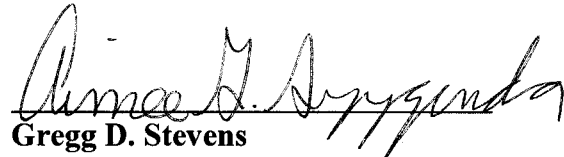
1. Plaintiff's claim fails to state a claim for which relief may be granted.
2. The Midland Defendants further plead that constitutional and statutory damage caps apply to this Complaint.
3. The Midland Defendants are not liable for any of the claims in Plaintiff's Complaint because the Midland Defendants conduct at all times complied, and was in good faith conformity, with all applicable contracts, laws, and regulations.

4. Plaintiff's claims may be subject to an arbitration agreement.
5. Plaintiff's claim against Midland Funding, LLC for violation of 15 U.S.C. § 1692e(8) for "communicating credit information to the consumer reporting agencies that it knew or should have known to be false" is preempted by 15 U.S.C. § 1681 et seq.
6. The Midland Defendants are not liable to Plaintiff for her claims that the Midland Defendants violated 15 U.S.C. § 1681s-2(a) because Plaintiff lacks standing to pursue these claims against the Midland Defendants.
7. The Midland Defendants acts were proper in all respects pursuant to all state and federal statutes.
8. Plaintiff failed to mitigate her damages.
9. The Midland Defendants are not responsible for the acts of third parties which may have caused Plaintiff's damages.
10. The Midland Defendants' liability, if any, is eliminated by Section 392.401 of the Texas Finance Code, and by 15 U.S.C. § 1692k(c) because any violations by the Midland Defendants were not intentional, but resulted from a bona fide error notwithstanding the use of reasonable procedures adopted by the Midland Defendants to avoid such error.
11. The Midland Defendants reserve the right to assert any additional affirmative defenses that may be discovered during the course of additional investigation.

For the above reasons Midland Credit Management, Inc. and Midland Funding LLC respectfully request that Plaintiff take nothing by her Complaint and for such other and further relief to which it may be entitled.

Respectfully submitted,

By:



**Gregg D. Stevens**

State Bar No. 19182500

**Aimee G. Szygenda**

State Bar No. 24027054

**MCGLINCHAY STAFFORD, PLLC**

2711 N. Haskell Avenue

Suite 2750, LB 25

Dallas, Texas 75204

Telephone: (214) 445-2406

Facsimile: (214) 445-2450

**ATTORNEYS FOR DEFENDANT  
MIDLAND CREDIT MANAGEMENT,  
INC. AND MIDLAND FUNDING LLC**

**CERTIFICATE OF SERVICE**

I hereby certify that on the 2<sup>nd</sup> day of July, 2013, a copy of the above and foregoing document was forwarded via facsimile and first class mail to the following counsel of record:

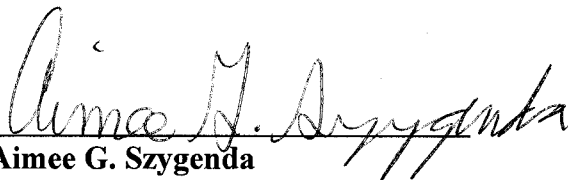
Jeff Wood  
McClendon & Milligan  
103 N. Goliad, Suite 204  
Rockwall, TX 75087

Brian T. Morris  
Deanna E. Caldwell  
WINSTEAD PC  
500 Winstead Building  
2728 N. Harwood St.  
Dallas, TX 75201

Alyson Blatney  
Strasburger & Price, LLP  
2801 Network Blvd., Suite 600  
Frisco, TX 75034

Jeffrey Mills  
Jones Day  
2727 N. Harwood Street  
Dallas, TX 75201

Jeremiah J. Anderson  
King & Spalding LLP  
1100 Louisiana, Suite 4000  
Houston, TX 77002

  
Aimee G. Szygenda